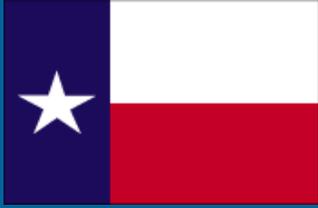


July 1998



TEXAS CIRCULATION
MANAGEMENT ASSOCIATION

TCMA Newsletter

TCMA Annual Conference Catch the Wave!

By Andy Nelson

TCMA's annual conference is scheduled for October 12 - 14, 1998, at the Radisson Hotel in South Padre Island. The conference will feature **Steve Wiley**

"The Human Side of High Performance" as the key note speaker. The program

will also include speakers with ideas and strategies from the retail food industry and magazine in-



dustry and industry updates from NAA, ABC and the TCMA legal counsel. The

host newspapers in the Valley are putting together an exciting and informative conference that you will not want to miss. Registration forms are included with this month's newsletter. Be sure to make your hotel reservations before September 15, 1998. Hotel rates increase after September 15, 1998.

Spring Seminar Survey

Chris Bradford, organizer of the Spring Seminar held in Austin in May 1998, has reported some interesting survey results. The sur-

vey was handed out to participants attending the seminar.

| | |
|--------------|----------------|
| Hotel | 92 % favorable |
| Meeting room | 86 % favorable |
| Food | 41 % favorable |

Inside this issue:

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Special points of interest:

- TCMA Convention October 12-14, 1998
- E-mail database started
- Sho-Rack News
- Legally Speaking

Legally Speaking

By L. Michael Zinser TCMA General Counsel

In this month's column, we report on a Texas State Court decision holding that a publisher was not liable for injuries caused by an independent contractor to a third party, a Texas Supreme Court case on the at-will doctrine, and a Texas Court of Appeals case where the court reversed itself and applied the at-will doctrine in favor of the Employer.

1. Jury verdict in favor of the *Houston Chronicle*

A jury in state court in Houston recently entered a verdict that the *Houston Chronicle* had no liability for the death of a person struck and killed by an independent contractor distributor. In a classic, shameful "deep pockets" plaintiff's action, the attempt to extract cash failed. The newspaper distributor was not delivering newspapers at the time of the accident.

Significant to the decision was the independent contractor agreement between the *Houston Chronicle* and the distributor. It "marketed" a strong case for contractor status. In addition, the use of newspaper industry expert Joe Wheeler (Executive Director of the CalWestern Circulation Managers Association) was key in explaining the independent contractor issues to the jury. Congratulations *Houston Chronicle!*

Editor's Note: The independent contractor agreement scrutinized was drafted by Zin-

ser and Patterson.

2. Oral assurances do not modify at-will employment

The Texas Supreme Court ruled that the at-will nature of employment is not modified by an employer's oral assurances that an employee, whose work is satisfactory, will not be terminated without good cause.

A hospital employee sued a hospital, her former employer, for breach of oral contract of employment. The employee claimed that when she was hired by the hospital, its administrator told her that she would be able to keep her job at the hospital as long as she was doing her job and that she would not be fired without a good reason. After ten years of employment with the hospital, the employee was fired without good cause.

The general rule in Texas is that, absent a specific agreement to the contrary, employment may be terminated by the employer or the employee at-will for good cause, bad cause, or no cause at all. The court held that the vague comments made to the employee in this case were not specific enough to supercede this rule. Such general statements do not justify the conclusion that a binding contract is intended by them.

The court held that to create such a contract, the employer

must unequivocally indicate a definite intent to be bound not to terminate the employee except under clearly specified conditions. Neither general comments nor comments that an employee will only be discharged for good cause or for a good reason are not indicative of such intent, when there is no definitive agreement on what those terms will include. "An employee who has no formal agreement with his employer cannot construct one out of... comments, encouragement, or assurances."

3. Texas Court of Appeals sees the light

A recent Texas Court of Appeals decision reversed a trial court's grant of summary judgment in favor of the employer on

a terminated employee's breach of contract claim. The court held that an employer must have good cause to terminate an em-

ployee who had with his employer, a "memorandum of employment agreement... which provided for an annual salary...." The Texas Court of Appeals initially held that this written employment agreement providing for an annual salary "limited in a meaningful and special way the employer's prerogative to discharge the employee during the dictated period of employment."

The employer, dissatisfied

*Jury verdict in favor of the
Houston Chronicle*

(Continued on page 3)

Zinser Continued

with this ruling, moved the Texas Court of Appeals for a rehearing. The Texas Court of Appeals reconsidered its decision and on May 20, 1998, granted the employer's motion, in light of a new Texas Supreme Court opinion, *Montgomery County Hospital Dist. v. Brown* (see above).

The Texas Court of Appeals based its reversal upon the Texas Supreme Court's statement that "[a]n employee who has no formal agreement

with his employer cannot construct one out of indefinite comments, en-



couragements, or assurances." Recognizing that general oral assurances of job security are more

definite than a simple representation of what an annual salary was to be, the Texas Court of Appeals, reconsidering its ruling, affirmed the initial judgment of the trial court, which had granted summary judgment in favor of the employer on the terminated employee's claim for breach of contract.



It's the 90's and what better and faster way to communicate than the Internet. We are building an e-mail address file at TCMA. Won't you join us? Send your e-mail

We are building an e-mail address file at TCMA

address to tcma@chron.com and you can be included. When important information arises that needs to be communicated, you will be sent an e-mail. Do it today!



**Make your TCMA Convention hotel reservations now!
Radisson Resort Hotel
956 761 6511
800 292 7704
Rates from \$75.00
October 12-14, 1998**

Looking at the Price Tag

Several years ago the book, *The Day America Told the Truth*, reported the disturbing results of a nationwide survey. One of the questions asked was “What would you do for ten million dollars?” Twenty five percent of those surveyed stated that they would abandon their families, 23% would engage in prostitution for a week, and 7% would even commit murder. The authors concluded that everyone has a price. Doug Sherman, author of *Keeping Your Ethical Edge Sharp*, was right when he said that integrity involves two issues: (1) a study of what is the right thing to do, and (2) a consideration of what price you are willing to pay to do the right thing.

The man or woman who declares that he is “not for sale” at any price knows that he may someday pay dearly for his declaration. John Maxwell appropriately begins his latest book, *Becoming a Person of Influence*, with a chapter on integrity. He states that integrity is an “inside” job, and that we need to stop looking outside ourselves to explain any deficiencies in our character.

***Integrity is not determined by circumstances.** Our upbringing and circumstances may *affect* who we are, but we are ultimately responsible for our choices. Says Maxwell, “Your circumstances are as responsible for your character as a mirror is for your looks. What you see

only reflects what you are.” In the book of Proverbs we learn that integrity is tested by both adversity (“If you falter in times of trouble, how small is your strength”—Pr.24:10) and prosperity (“The crucible is for silver and the furnace for gold, but man is tested by praise he receives”— Pr. 27:21). How we handle such circumstances is up to us.

***Integrity is not based on credentials.** Too often we try to influence people by the weight of our credentials (titles earned or positions held) rather than the strength of our character. Only character keeps the focus on responsibilities, builds a legacy for the future, and generates genuine respect.

*** Integrity is not to be confused with reputation.** A good reputation is valuable, but it is only a reflection of the person’s character. Maxwell quotes William Hersey Davis, who offers these contrasts between reputation and character:

- Reputation is what you have when you come to a new community; character is what you have when you go away.
- Reputation is what men say about you on your tombstone; character is what the angels say about you before the throne of God.

Another great book on the subject of integrity is *A Life of Integrity*, edited by Dr. Howard Hendricks. In it Hendricks states

that integrity is worth the price because of what it produces: reliable character, a clear conscience, a lingering legacy, the privilege of being a mentor or model, and the prospect of ending well—with no regrets. Guard your integrity this week—it’s priceless.

(The Word for the Week, a weekly fax letter from Success Insight)

In Memoriam

Jerry Welch
July 24, 1946-April 23, 1998

After a long and valiant battle with cancer, **Jerry Welch** passed away on April 23, 1998. Jerry was a popular Sho-Rack Customer Service Representative for nearly ten years and served his customers faithfully to the end.

Jerry Welch was an inspiration to everyone who worked with him. He will be sorely missed. He is survived by his wife, Virgie, and four children.

Don't Miss the Boat!

There is still time to submit your ad (with payment) for the 1998 TCMA Buyer's Guide.

The original due date of July 1, 1998, has been extended.

Do it today! Do not miss this opportunity to tell the membership about your business.

Because....

What happens if you don't advertise?

NOTHING!

Send ad with payment to:

**Lorenzo Vigliante
The Eagle
P. O. Box 3000
Bryan, TX 77802**

**Make your checks payable to
TCMA.**



Dick Bailey Retires



After 12 years of service with Kaspar Sho-Rack Dick Bailey has announced his retirement. Dick, a salesman for Sho-Rack territory five which includes Texas and Oklahoma, will be retiring to spend more time with his wife, four sons and grandchildren.

Before joining Kaspar Sho-Rack, Dick Bailey was associated with the Azle News-Advertiser, the Fort Worth Star-Telegram and Gannett Newspapers located in Rochester; Binghamton; Elmira; NY and El Paso, TX He held several positions including News Editor, Circulation Manager and City Circulation Manager.

Dick was a member of the Midwest Circulation Managers Association, the International Circulation Managers Association and the Texas Circulation Managers Association.

While with Kaspar Sho-Rack he received several awards, including the Silver Dollar Top Six in Sales award for 1987, 1989, 1995 and 1996; the New Accounts award-1989, Million Dollar Sales award-1986; and the Two Million Dollar Sales award in 1988. Dick was also a member of the Kaspar Sho-Rack Advisory Board in 1988 and 1997.

Dick enjoyed working his territory and stated that this was one of the hardest decisions he ever had to make. In reference to retiring, Dick said, "I cherish the many friendships I made while traveling my territory and would like for my customers to give me a call or drop a line." To contact Dick, write to him at 613 Williams Road, Azle, Texas 76020, or call him at 817-444-2787.

James Smith
Secretary, TCMA
Houston Chronicle
801 Texas Avenue, Suite 219
Houston TX 77002

tcma@chron.com

TCMA

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